

1 **JOSHUA L. DRATEL**
Admitted *Pro Hac Vice*
2 **ERIK B. LEVIN**
California State Bar No. 208274
3 Law Office of Erik B. Levin
2001 Stuart Street
4 Berkeley, California 94703
Telephone: (510) 978-4778
5 Fax: (510) 978-4422
Email: erik@erikblevin.com

6 Attorneys for Defendant
7 ADAM SHAFI

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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13 UNITED STATES OF AMERICA)

14 Plaintiff,)

15 v.)

16)
17 ADAM SHAFI,)

18 Defendant.)
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Case No. CR 15-0582 (HWO)

Date: December 22, 2015
Time: 1:30 p.m.

DEFENDANT'S SUPPLEMENTAL
MOTION FOR RELEASE ON BAIL

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OTHER

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Introduction

This motion supplements Adam Shafi's December 11, 2015, motion for pretrial release, and reports subsequent developments that further support that application. Those developments are:

- (1) Friday, December 18, 2015, the day after the arraignment in this case, Mr. Shafi was moved to solitary confinement after *six months* detention without incident in general population. Also, that transfer occurred soon after two FBI agents involved in this case visited the detention facility;¹ and
- (2) that same day, officials at the detention facility entered Mr. Shafi's cell and removed privileged notes he had prepared for counsel. The officials also removed his notebook.

I. The Placement of Mr. Shafi In Solitary Confinement, and the Seizure of His Legal Papers, Including His Notes, Further Demonstrate that Adam Should Be Granted Bail

These incidents reinforce the need for pretrial release in this case, as they substantially infringe upon Mr. Shafi's Fifth Amendment Due Process right to assist in the preparation of his defense, his Sixth Amendment right to counsel, and the attorney-client privilege. It is also unclear at this point to what extent the seizure of Mr. Shafi's notes constitutes an irreparable violation.

As his prior uneventful six months in custody demonstrate, there is not any legitimate security (or other) basis for placing Mr. Shafi in solitary confinement, a condition that is onerous and psychologically debilitating. Indeed, the literature detailing the deleterious effects of solitary confinement and legion and uncontroverted. *See, e.g.,* Physicians for Humans Rights released *Buried Alive: Solitary Confinement in the US Detention System* (hereinafter "*PHR Report*"), available at

https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

In that context, the *PHR Report* points out that "[a] review of the medical literature on solitary confinement provides convincing evidence that isolation has severe psychological and

¹ Officials at the facility asked Mr. Shafi Thursday, after the arraignment, whether he wished to be moved to solitary for purposes of protective custody, but he declined.

1 physical effects.” *Id.* See also *id.*, at 8 (“[f]rom the outset, solitary has had deleterious
 2 psychological effects”). Similarly, Craig W. Haney, Ph.D., Professor of Psychology at U.C. Santa
 3 Cruz (and a lawyer), who has written extensively for decades about prisons and prison conditions,
 4 has reported that “there is not a single published study of solitary or supermax-like confinement in
 5 which nonvoluntary confinement lasting for longer than 10 days, where participants were unable
 6 to terminate their isolation at will, that failed to result in negative psychological effects.” *Id.*, at 1,
 7 quoting Craig Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*,
 8 *Crime & Delinquency* 49: 124-156, 132 (2003). See also Haney, “The Consequences of Prison
 9 Life: Notes on the New Psychology of Prison Effects,” in David V. Canter and Rita Zukayskienée,
 10 *Psychology and the Law: Bridging the Gap*, Ashgate Publishing (2008), at 144. See also *Madrid*
 11 *v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) (solitary confinement “may press the outer bounds
 12 of what most humans can psychologically tolerate”); Stuart Grassian and N. Friedman, “*Effects of*
 13 *Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*,” *International Journal of*
 14 *Law and Psychiatry*, Vol. 8 (1986), pp. 49-65; Grassian, “*Psychopathological Effects of Solitary*
 15 *Confinement*,” *American Journal of Psychiatry*, vol. 140 (1983), pp. 1450-1454.²

16 In addition, solitary confinement interferes dramatically with counsel’s ability to
 17 communicate and meet with Mr. Shafi, as experience – with which counsel is all too familiar in
 18 other cases – teaches that conditions of confinement, rather than preparation for the substance of
 19 the case, gain priority in those limited sessions in which counsel and the defendant meet. Thus,
 20 these drastically more severe conditions will hamper the ability to prepare Mr. Shafi’s defense.

21 Also, the continuing fear of a repetition of the seizure of Mr. Shafi’s legal materials
 22 further and materially impairs his ability to participate in the preparation of his case. He simply
 23 cannot take the chance that his private, privileged notes about evidence and other issues related to
 24 the case will be subject to review by representatives of the governments. As a result, he will have
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26 ² In fact, just last week New York State, in response to a lawsuit instituted by the New
 27 York Civil Liberties Union, agreed to revamp its system of solitary confinement. See Rebecca
 28 Davis O’Brien, “New York State Moves to Curtail Use of Solitary,” *The Wall Street Journal*,
 December 17, 2015, available at <[http://www.wsj/articles/new-york-state-moves-to-curtailuse-
 of-solitary-confinement-1450318412?tesla=y](http://www.wsj/articles/new-york-state-moves-to-curtailuse-of-solitary-confinement-1450318412?tesla=y)>.

1 to refrain from producing such materials altogether. The adverse impact on his ability to exercise
2 his Fifth and Sixth Amendment rights in that context is manifest.

3 **Conclusion**

4 It is respectfully submitted that Mr. Shafi's right to participate in the preparation of his
5 defense, and his right to counsel and the protections of the attorney-client privilege, cannot be left
6 to the mercy of the government's arbitrary and interfering tactics timed to place Mr. Shafi falsely
7 in a negative light while his bail application is pending. Accordingly, it is respectfully submitted
8 that Mr. Shafi's motion for pretrial release should be granted.

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10 DATED: December 21, 2015

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13 JOSHUA L. DRATEL
Admitted *Pro Hac Vice*
ERIK B. LEVIN

14 *Attorneys for Defendant Adam Shafi*
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Certificate of Service

I hereby certify that on December 21, 2015, I filed the foregoing Defendant's Supplemental Motion for Release on Bail with the Clerk of the U.S. District Court for the Northern District of California using the CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Joshua L. Dratel

JOSHUA L. DRATEL